

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

|                                  |   |                    |
|----------------------------------|---|--------------------|
| <b>MICHAEL ANTHONY McDONALD,</b> | ) |                    |
|                                  | ) |                    |
| <b>Petitioner,</b>               | ) |                    |
|                                  | ) | <b>1:05CV00277</b> |
| <b>v.</b>                        | ) | <b>1:95CR266-1</b> |
|                                  | ) |                    |
| <b>UNITED STATES OF AMERICA,</b> | ) |                    |
|                                  | ) |                    |
| <b>Respondent.</b>               | ) |                    |

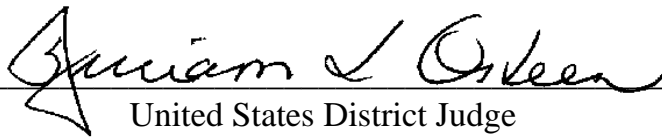
**O-R-D-E-R**

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on April 4, 2005, was served on the parties in this action. Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

**IT IS THEREFORE ORDERED** that Petitioner's "Rule 12(b)(2)" motion seeking to have his sentence vacated based on several recent Supreme Court decisions [Pleading No. 1] be construed as an attempt by Petitioner to file a second or successive motion to vacate, set aside or correct sentence, and that the motion to vacate be dismissed without prejudice due to Petitioner's failure to obtain certification from the Fourth Circuit as required

by 28 U.S.C. §§ 2244 and 2255 and Fourth Circuit Local Rule 22(d). A judgment dismissing this action will be entered contemporaneously with this Order.

  
United States District Judge

Date: October 5, 2005